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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,352	10/03/2003	Carlos E. Collazo	OSTEONICS 3.0-466	1797
530 7590 05/18/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER WILLSE, DAVID H	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/678,352

Applicant(s)

COLLAZO, CARLOS E.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-11, 13, 14 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11, 13, 14, and 32-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-11, 13, 14, and 36-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 8, "the trial" lacks a proper antecedent basis and is somewhat confusing as to whether the "trial augment" (claim 1, line 1) or the "trial distal femoral component" (claim 1, line 3) is being referenced. Similar problems exist at claim 4, line 4; claim 8, line 2; and claim 36, line 2.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-11, and 32-39 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hoeppner et al., US 6,416,552. Figures 22 and 23 illustrate a first block, corresponding to one of the latch members **224** or the seal plate **222**, and a second block, corresponding to the seal plate **222** or the other of the latch members **224**. As seen from column 13, line 32 et seq., the seal member **220** is configured to engage the bone facing cavity **56** in the distal femoral component **180** shown in Figures 17 and 18. The elements can be interpreted as

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“trials” in view of the discussion at column 12, lines 46-55, for example. The springs **234** impart an outward bias such that the blocks expand outwardly for engagement with the channels **182** (column 13, lines 47-48 and 58-59). Regarding claims 8, 32, and others, the trial augment is *capable* of expanding in an anterior-posterior direction, whether or not such was the intent. Regarding claims 10 and 11, the pins **232** can be seen as stop members because they retain the springs **234** (column 13, line 46) and thus help stabilize the latch members **224** against elements **226**, and the posts **240** serve as stop members by contacting the arms **246** of the tool **238** (column 13, lines 49-56).

Claims 13, 14, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoepfner et al., US 6,416,552 B1. A surgical tray would have been immediately obvious, if not inherent, to one of ordinary skill in order to conveniently arrange the seal member **220**, the femoral component **180**, the tool **238**, and other tools or accessories for the surgical procedure.

The Applicant's remarks have been reviewed. The current claims do not incorporate all the amendments recommended in the Interview Summary mailed on April 16, 2007; in particular, the *body* of each independent claim does not include a limitation pertaining to the augment being sized to engage the bone facing cavity of the femoral component. The previous rejections based upon the Buni patent (US 6,004,352) have thus been withdrawn *without prejudice* in favor of the Hoepfner et al. patent, which is deemed to be the “best available art” (MPEP § 706.02, section I) relative to the present version of the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**